

SECTION 3000. PRELIMINARY PLANS, DEFINITIVE PLANS AND RESIDENTIAL COMPOUND PLANS

3100. PRE-SUBMISSION REVIEW.

Prior to investing in extensive professional design costs for preparation of subdivision plans, the applicant is invited to review the proposed development of the parcel of land with the Board, in order to explore general conditions involving the site and to discuss potential problems. Pencil sketches, which need not be professionally prepared, will assist in this discussion, and should show the critical features of a Preliminary Plan. In some cases, this pre-submission review may eliminate the need for the formal submission of a Preliminary Plan.

3200. PRELIMINARY PLAN.

3210. Submission. A Preliminary Plan of a subdivision may be submitted and for any nonresidential subdivision shall be submitted by the subdivider to the Board and through the Board to the Board of Health for discussion and approval, modification or disapproval by the Board. The submission of such a Preliminary Plan shall be made of Form B - Application for Approval of a Preliminary Plan - and will enable the subdivider, the Board, the Board of Health, other municipal agencies, and owners of property abutting the subdivision to discuss and clarify any aspects of or problems with such subdivision before a Definitive Plan is prepared. For this reason, the Board strongly encourages the submission of such Preliminary Plans in every case. Seven (7) copies of the Preliminary Plan shall be submitted to the Board at a regularly scheduled meeting, together with the fee set forth in Appendix A - Planning Board Fee Schedule. Copies of the plan may be examined by the public during regular business hours of the Town Hall.

For subdivisions of eight (8) or more lots, two (2) subdivision plans shall be submitted at the Preliminary Plan stage: 1) a flexible development plan, and 2) a conventional plan. The subdivider is also strongly encouraged to consider submission of a plan for a Conservation Subdivision.

3220. Contents. The Preliminary Plan may be drawn on tracing paper with pencil, preferably at a scale of one (1) inch equals forty (40) feet, or other suitable scale acceptable to the Board, shall be clearly designated as "Preliminary Plan", and shall show:

- a. subdivision name, boundaries, north point, date, and scale;
- b. name and address of record owner, applicant, designer, engineer, and surveyor;
- c. names of all abutters as determined from the most recent Town tax list;
- d. existing and proposed lines of streets, ways, easements, and public areas within the subdivision;
- e. location, direction, names, and streets present widths of ways and public or private ways bounding, approaching, or within reasonable subdivision;
- f. location, names, and present widths of streets bounding, approaching, or near the subdivision;

- g. topography of the land in no greater than two (2) foot contours, including all resource areas as defined under 310 CMR 10.00 and all natural water courses, including vernal pools and saltmarshes;
- h. proposed system of drainage, including existing natural waterways, in a general manner, but including drainage both within and adjacent to the subdivision;
- i. approximate boundary lines of proposed lots with approximate areas and dimensions;
- j. estimates of the grades of proposed streets or profiles, where required by the Board;
- k. major site features such as existing stonewalls, fences, buildings, large trees and wooded areas, rock ridges and outcroppings, wetlands within 100 feet of the subdivision, perennial streams within 200 feet of the subdivision, and other water bodies;
- l. identification of any land area lying within five hundred (500) feet of any property valued under the provisions of G.L. c. 61A, as amended.
- m. adjacent natural resources.
- n. locus plat at an appropriate scale to locate the subdivision with the Town.

3221. The Preliminary Plan shall be accompanied by a statement of existing zoning, any easements, covenants, and restrictions applying to the area proposed to be subdivided, and a list of any waivers from these Regulations requested by the applicant.

3222. During discussion of the requirements set forth in Section 3220, the complete information required for Definitive Plan and the financial obligations of applicant will be addressed.

3230. Site Visit. After the regular Board meeting at which Preliminary Plan is first discussed, or a Definitive Plan submitted without prior Preliminary Plan, the Board and/or its agent may schedule a site visit to the proposed subdivision, accompanied by the applicant and his agents or representatives. In order to facilitate inspection and review of the site of the proposed subdivision, temporary staking will be required along the center line of all proposed roads in the subdivision before said site visit, or if impractical, the Board may permit a suitable alternative procedure.

3240. Decision. The Board shall, in conformance with G.L. c. 41, s. 81S, approve such Preliminary Plan with or without modifications, or disapprove such Preliminary Plan with reasons therefor.

3241. Approval of a Preliminary Plan, with or without modifications, does not constitute approval of a subdivision. Such approval does facilitate the final approval of a subdivision through submittal of a Definitive Plan.

3242. The Board shall notify the Town Clerk in writing of its decision on a Preliminary Plan in accordance with G.L. c.41, s.81S, as amended.

3243. The submission of a Preliminary Plan for examination by the Board shall not be deemed the submission of a Definitive Plan of a subdivision of land for approval by the Board under G.L. c. 41, s. 81L, and the action or decision of the Board as to such Preliminary Plan shall not prejudice its action or decision as to the Definitive Plan.

3300. DEFINITIVE PLAN.

3310. Submission. A Definitive Plan of a subdivision may be submitted by the subdivider to the Board for review and approval, modification or disapproval by the Board. The submission of such a Definitive Plan shall be made on Form C - Application for Approval of a Definitive Plan. If the applicant for subdivision has chosen not to previously submit a Preliminary Plan, then for subdivisions of eight (8) or more lots, two (2) plans shall be submitted:

- a. flexible development plan; and
- b. a conventional plan

Any person submitting a Definitive Plan of a subdivision of land to the Board for approval shall file therewith the following:

- a. twenty (20) prints of the Definitive Plan, dark line on white background. Prints will be referred town boards and departments for review;
- b. accompanying statements as required in Sections 3330 and 3340, below;
- c. one (1) properly executed Application Form and any other required forms on file with the Board (see Appendix C);
- d. the fee set forth in Appendix A, Application Fee Schedule.
- e. A certified list of abutters signed by the Board of Assessors with business sized envelopes, stamped and addressed to each abutter.
- f. A one-page summary of the proposed project and a letter-sized copy (8 ½ X 11) of the original drawing of the Definitive Plan of sufficient clarity for reproduction.

3311. The applicant shall file one (1) copy of the Definitive Plan and one (1) copy of the Application form with the Board of Health.

3320. Contents. The Definitive Plan shall be prepared by a Registered Professional Engineer and/or Land Surveyor, and shall be clearly and legibly drawn in black India Ink upon tracing cloth D-r mylar, and shall be 24" x 36" in overall dimensions with a one inch margin left on one 24" edge of each sheet for filing purposes. The prints shall be at a scale of not less than one (1) inch equals forty (40) feet, or such other scale as the Board may prescribe as adequate to show details clearly. Profiles of proposed streets shall be drawn to the same horizontal scale as the plan, and with vertical scale ten (10) times larger unless otherwise permitted by the Board, on separate tracing cloth or mylar of the same dimensions as the plan sheets. If multiple sheets are used to show the subdivision, they shall be accompanied by an index sheet showing the entire subdivision. The Definitive Plan shall show the following information;

- a. a subdivision name, boundaries, north point, date, and scale;

- b. a locus map at a scale of one (1) inch equals one thousand (1000) feet showing the proposed streets in relation to existing streets in the immediate vicinity;
- c. name and address of record owner, applicant, and engineer or surveyor, with seal;
- d. where the owner or subdivider also owns or controls unsubdivided land adjacent to or directly across the street from the land shown on the Definitive Plan, the applicant shall submit a sketch plan showing possible or prospective street layout in the event that such unsubdivided land is developed, and shall also show the present drainage for such unsubdivided land, natural and constructed;
- e. boundary lines of bordering adjacent land or of land across the street from property being subdivided and names of abutters thereon as determined from the certified list of abutters;
- f. existing and proposed lines of streets, ways, easements, and any public or common areas within the subdivision;
- g. location, direction, names, and present widths and grades of streets and public or private ways bounding, approaching, or within reasonable proximity of the subdivision;
- h. sufficient data to determine the location, direction, and length of every street and way line, lot line, and boundary line so as to establish these lines on the ground. The location of base lines and necessary data from which bearings and elevations may be determined may be furnished by the County Engineer's Office. Should the Town establish a co-ordinate system, all street corners must be tied into the nearest triangulation station. The relative error of closure of property line traverse shall not be less than one (1) part in twelve thousand (12,000). A signed statement to this effect shall appear on the engineer's tracing cloth drawing. A copy of traverse notes shall be furnished to the Board upon request;
- i. location and identification of all existing buildings and site features such as stonewalls, fences, large trees and wooded areas, rock ridges and out-croppings, flood plain areas, wetlands within 100 feet of the subdivision, perennial streams within two hundred (200) feet of the subdivision, and other water bodies, including depth of water and direction of flow within or adjacent to the proposed subdivision;
- j. existing and proposed topography with two (2) foot contours based on mean sea level datum, or at a suitable interval as required by the Board. All buildings and physical features of abutting property that are within fifty (50) feet of the boundary must be shown.
- k. acreage of each lot, lot lines, bearings and length thereof in conformity with the Zoning By-law in each case;
- l. location of existing and proposed monuments, hydrants, public utility facilities, water pipes, fire ponds and cisterns, and wells within the subdivision;
- m. park or open areas suitably located for conservation, playground, or recreation purposes within the subdivision, if any;

- n. proposed storm drainage of land, including existing natural waterways and the proposed disposition of water from the proposed subdivision to either adequate natural drainage channels or artificial means of disposal thereof. Four (4) copies of a runoff plan and calculations using the rational formula (as described in Seelye's Design Data Book for Civil Engineers, latest edition), based on a ten-year expectancy period, to determine necessary pipe sizes which can be no less than twelve (12) inches in diameter. Roadways crossing brooks with a drainage area in excess of ten (10) acres shall be based on a twenty-five (25) year expectancy period. Pipe size, capacity, depth of flow and velocity of flow shall be included;
- o. location and purpose of all existing and proposed easements;
- p. location and species of proposed street trees, and/or individual trees or wooded areas to be retained within forty (40) feet of the sidelines of each street;
- q. street plans and profiles must show the percent of grade, radii and length of curves, the point of curvature, and the point of tangency of curves;
- r. street profiles on the centerlines and sidelines of proposed streets at a horizontal scale of one inch equals forty feet and vertical scale of one inch equals four feet, or such other scale acceptable to the Board. Profiles shall show elevation of sills of all existing structures. Present and proposed elevations must be shown at least every fifty (50) feet and must refer to the town base, mean sea level, if bench available within two thousand (2,000) feet of subdivision. Profile plans of roadways and appurtenances shall be derived from "on the ground" topography. Profile plans shall show roadway cross-sections together with locations of proposed underground utilities including sanitary and storm sewer lines, water lines and their appurtenances, along with details of all structures, headwall, and retaining walls;
- s. approximate proposed location of principal building on each lot to comply with the provisions of the Zoning By-Law, whenever uncertainty exists or upon the request of the Board, the Board of Health, or the Conservation Commission;
- t. location of a minimum of three (3) benchmarks, located by state plain data;
- u. suitable space to record the action and signatures of the Board members on each sheet of the Definitive Plan in the lower right hand corner;
- v. location of existing utilities, underground or overhead, indicating size, type, and location of easement;
- w. an overlay at the same scale as the Definitive Plan showing the SCS interpretation of suitability for on-site sewage disposal, or showing USGS surficial geology, or both. Board of Health sanctioned testing required under Title 5 (310 CMR 15.00) may be substituted for this overlay. Test pit logs for locations selected by the Planning Board and shown on one of the above overlays, with not more than one (1) pit per four (4) proposed lots, selected to reveal general patterns of subsurface characteristics, after consultation with the Board of Health and the Conservation Commission;

- x. where connection to the public water system is not proposed, information indicating why such connection is not feasible, description of provisions to be made for water for fire fighting, and information adequate to allow determination of compliance these regulations regarding potable water quality and quantity;
- y. an Erosion and Dust Control Plan, indicating the erosion and dust control measures to be employed, including description of locations of temporary stockpiles, spoil areas, temporary drainage systems, slope stabilization techniques, sediment basins, etc., and narrative description of how dust is to be controlled and how erosion from individual lots onto streets and into drainage systems is proposed to be controlled and, in the case of subdivision of more than fifteen (15) lots, review comments on the Plan by the Conservation Commission and by the Soil Conservation Service or by others acceptable to the Board as expert in soil erosion;
- z. where located within the Special Flood Hazard District, base flood elevation (the level of the one hundred (100 year flood) data for proposals greater than five (5) acres;
- aa. an engineer's estimate of materials with quantities required to construct roadway, utilities and appurtenances for plan as submitted.

3330. Accompanying Statements and Data. The Definitive Plan shall be accompanied by four (4) copies of the following written statements:

- a. Existing zoning and any easements, covenants and restrictions applying to the area proposed to be subdivided.
- b. Logs of results of all test pits made.
- c. Data and proposed arrangements for water supply, sewerage, and sewage disposal, including all appurtenances, as required by the Board of Health.
- d. Drainage calculations prepared by the applicant's engineer, including design criteria, drainage area and other information sufficient for the Board to verify the size of any proposed drain, swale, drainfield, culvert, bridge, or catch basin. Said calculations are to be made separately for each drainage facility showing its location, the total upstream drainage area, the percentage of impervious surfaces in the drainage area, the runoff per acre, the design runoff, facility size, slope and capacity, and the velocity of water through it. Describe any areas subject to ponding or flooding, existing or proposed flood control or wetland easements, estimated increase of peak runoff caused by altered surface conditions, and methods to be used to return water to the soils.
- e. A complete list of any waivers requested from these Subdivision Rules and Regulations.
- f. Common Land and Ways: As part of the submission of a Definitive Plan, the applicant must state how he proposes to deal with any common land intended for the use of all residents of the development and all ways within the development. The applicant must elect one of the following options:

1. Convey by deed to each owner singly and in total so that each owns to the center of the way abutting the owner's property and a share of any common land equal to the proportion that owner's land bears to the total land of all owners.
2. Convey by deed to a perpetual trust established to be responsible for maintenance of all ways and common land.
3. Petition the Town to accept the way(s). Election of this option shall require the selection of either of Option 1 or 2 above to be implemented if the Town refuses to accept the way(s).

The option selected shall be recorded on the Definitive Plan and must be implemented before bond, surety or covenant covering improvements in the development may be released.

Evidence of compliance with this section shall consist of copies of deeds containing wording to implement one of the options for all lots sold up to the time release of bond, surety, or covenant is requested. Deeds for a minimum of twenty (20%) percent of all lots in the subdivision, but no less than two (2) lots, must be submitted to satisfy this requirement.

When driveways are shared by more than one lot, suitable permanent easements must be included in the deed for the lot for which the driveway passes, and this fact shall be included in the deeds of the other lots served by the driveway. Reference to these easements shall be shown on the Definitive Plan.

3340. Development Impact Statement (DIS). The impact of the proposed subdivision is to be described according to the following criteria, except that in the case of subdivisions containing twenty (20) or fewer units, the Board will normally waive some or all of these requirements. Unless this requirement is waived by the Board, the DIS shall be prepared by an interdisciplinary team including a Registered Landscape Architect or Architect, a Registered Professional or Civil Engineer, and a Registered Surveyor.

a. Physical Environment.

1. Describe the general physical conditions of the site, including amounts and varieties of vegetation, general topography, unusual geologic, archeological, scenic and historical features or structures, location of significant viewpoints, stone walls, trees over 16 inches in diameter, trails and open space links, and indigenous wildlife.
2. Describe how the project will affect these conditions, providing a complete physical description of the project and its relationship to the immediate surrounding area.

b. Surface Water and Subsurface Conditions.

1. Describe location, extent, and type of existing water and wetlands, including existing surface drainage characteristics, both within and adjacent to the project.

2. Describe any proposed alterations of shore lines, marshes, or seasonal wet areas.
3. Describe any limitations imposed on the project by soil and water conditions and methods to be used to overcome them.
4. Describe the impact upon ground and surface water quality and recharge, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer, and other activities within the development. For subdivisions located in whole or in part within the Town's Water Supply Protection District, as established in the Zoning By-law, this shall include an analysis of drainage system alternatives, examining the concentration and speed of the transport of contaminants.
5. Discussion of the storm water management system beginning with the existing surface drainage patterns in the area of the site and downstream. This discussion shall be consistent with Section IV (F) of the Storm Water Management Section. It shall also provide a description of maintenance requirements and associated annual costs, for the storm water management system.

The contents and submittal requirements shall be as described in Appendix B: Requirements for Contents of Storm Water Management Plans and Section IV (F): Drainage.

c. Circulation Systems.

(1) Explain the reasons for location of streets and intersections as shown on the Definitive Plan, with specific reference to criteria set forth in Section 4100, below.

(2) Project the number of motor vehicles to enter or depart the site per average day and peak hour. Also state the number of motor vehicles to use streets adjacent to the proposed subdivision per average day and peak hour. Such data shall be sufficient to enable the Board to evaluate (a) existing traffic on streets adjacent to or approaching the proposed subdivision, (b) traffic generated or resulting from the proposed subdivision, and (c) the impact of such additional traffic on all ways within and providing access to the proposed subdivision. Actual study results, a description of the study methodology, and the name, address, and telephone number of the person responsible for implementing the study, shall be attached to the DIS.

d. Support Systems.

- (1) Water Distribution: Discuss the types of wells proposed for the site, means of providing water for fire-fighting, and any problems unique to the site.
- (2) Sewage Disposal: Discuss the type of system to be used, suitability of soils, procedures and results of percolation tests, and evaluate impact of disposal methods on surface and groundwater.

- (3) Refuse Disposal: Discuss the location and type of facilities, the impact on existing Town refuse disposal capacity, hazardous materials requiring special precautions.
- (4) Fire Protection: Discuss the type, location, and capacity of fuel storage facilities or other flammables, distance to fire station, and adequacy of existing fire fighting equipment to confront potential fires on the proposed site.
- (5) Recreation: Discuss the distance to and type of public facilities to be used by residents of the proposed site, and the type of private recreation facilities to be provided on the site.
- (6) Schools: Project the increase to the student population for nursery, elementary, junior high and high school levels, also indicating present enrollment in the nearest public schools serving these categories of students.
- (7) Description of proposed utilities (i.e., water, sewer, cable, telephone, electric and gas) including points and methods of connection and capacity of the existing system.

e. Phasing. Where development of the subdivision will require more than one (1) year, indicate the following:

- (1) Describe the methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles. Describe the approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure.
- (2) Describe the phased construction, if any, of any required public improvements, and how such improvements are to be integrated into subdivision development.

3400. REVIEW OF DEFINITIVE PLANS.

3410. Board of Health as to Suitability of the Land. The applicant shall file with the Board of Health two prints of the Definitive Plan. The Board of Health shall, within forty-five (45) days after filing of the plan, report to the Board in writing and shall make specific findings as to which, if any, of the proposed lots shown on such plan cannot be used for building sites without injury to the public health, or is unsuitable because of drainage conditions. The Board of Health shall make specific findings and state reasons therefor in such report, and, where possible, shall make recommendations for the adjustment thereof. The Board of Health shall determine the extent of soil evaluation, which may include deep test holes, percolation tests, and test borings, and shall determine the number of tests to be required. At the time of the filing of the Definitive Plan, the applicant shall stake all proposed lots and mark proposed lot numbers on said lots for identification to facilitate review by the Board of Health.

3420. On-site Wastewater Disposal. Notwithstanding Section 3410, a permit to construct an individual sewage disposal system for sanitary wastewater disposal shall be obtained from the Board of Health for each individual lot prior to the issuance of a building permit. A condition shall be recorded on the Definitive Plan as follows: "No building or structure shall be built or placed upon any lot without a permit from the Board of Health.", or words to this effect.

3430. Other Town Officials. Before approval of a Definitive Plan is given, the Board will obtain appropriate checks on the engineering and survey information shown on said plan, and written statements that the proposed improvements shown are laid out to the satisfaction of the official, as follows:

3431. As to the design of the street system, location of easements, and design of sewerage, water, and drainage systems, including appurtenances: the planning consultant or engineer designated by the Board;

3432. As to location, size, and species of street trees: the Tree Warden.

3433. As to the form of easements, covenants, and performance guarantees: Planning Board Legal Counsel.

3434. As to location of hydrants, fire ponds and cisterns, and with regard to fire safety: the Fire Chief.

3435. As to street safety: the Police Chief.

3440. Public Hearing. Before approval, modification, or disapproval of a Definitive Plan is given, a public hearing shall be held by the Board. Notice of such hearing shall be given in accordance with the provisions of M.G.L. c. 41, s. 81T, as amended. A copy of said notice shall be mailed, by certified mail, to the applicant and to all owners of land submitted on Form D - Certified List of Abutters.

3450. Decision. After the public hearing, the Board in due course will approve, modify and approve, or disapprove the Definitive Subdivision Plan submitted. Criteria for action by the Board shall be the following:

3451. Completeness of submissions; and technical adequacy of all submissions;

3452. Determination that development at this location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible natural disasters, traffic hazard, or other environment degradation;

3453. Conformity with the requirements of Sections 3000 and 4000 herein, and the Zoning By-law;

3454. Determination, based upon the Community and Environmental Impact Statement (where submitted), that the subdivision as designed will not cause substantial and irreversible damage to the environment, which damage could be avoided or ameliorated through an alternative development plan.

3500. RESCISSION OF PLANNING BOARD APPROVAL.

3510. Failure to Obtain Endorsement. The applicant's failure to obtain the endorsement of the Planning Board within six (6) months from the date of the approval of the Definitive Plan shall result in the automatic rescission of said approval.

3520. Failure to Construct. The applicant's failure to complete the construction of the ways, utilities, and services shown on the definitive plan within three (3) years from the endorsement of said plan shall result in the automatic rescission of the approval of said plan. Prior to the expiration of said three year period, applicant may request, in writing, an extension of one (1) year to complete the construction of the ways, utilities, and services shown on the definitive plan for good cause, which may be granted by the Planning Board upon the vote of a majority of its members then present and voting.

3600. PERFORMANCE GUARANTEE.

3610. Final Approval with Bond or Surety. Before approval of a Definitive Plan, the subdivider shall either file a performance bond, or deposit money or negotiable securities in an amount determined by the Board, in accordance with the procedure set below, to be sufficient to cover the cost plus ten (10) percent of all or any part of the improvements specified herein, or follow the procedure set forth below. Letters of credit are not acceptable. Passbooks shall be accompanied by a form assigning same to the Town of Marion. A bond estimate may be requested by the Board; such estimate shall remain effective for 90 days. The estimate shall reflect the cost for the Town to complete work under adverse conditions which may necessitate legal fees, public bidding, and additional town staff time. Ordinarily the Board shall require an amount covering the total cost of construction of all roads and other improvements within and without the subdivision. Such bond or security if filed or deposited shall be approved as to form and manner of execution by the Planning Board Legal Counsel, and as to sureties by the Town Treasurer. Such bond or security shall be contingent on the completion of such improvements not later than three (3) years from the date of the endorsement of the Definitive Plan. Failure to so complete shall result in the automatic rescission of the approval of the definitive plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant prior to the expiration of said period.

3611. In determining the amount of the bond or surety, the Board shall be guided by the following formula in setting the sum of the security:

- a. the Board's estimate of the cost; plus
- b. a ten percent margin or error; plus
- c. an appropriate rate of inflation over a five year period.

3620. Final Approval with Covenant. Instead of filing a bond or depositing surety, the subdivider may request approval of the Definitive Plan on condition that no lot in the subdivision shall be sold and no building shall be erected thereon, until the improvements specified in Section 5 are constructed and installed so as to adequately serve said lot or lots. Such covenants shall be

executed and duly recorded by the owner(s) of record, and shall run with the land. Proposed covenants shall be submitted with the Definitive Plan, and shall be approved as to form by the Town Counsel or Special Town Counsel. Such covenant shall state that the improvements shown on the Definitive Plan shall be completed not later than three (3) years from the date of the endorsement of the Definitive Plan. Failure to so complete shall result in the automatic rescission of the approval of the Definitive Plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant prior to the expiration of said period. Covenants and stated conditions therein shall be referred to on the plan and recorded in the Registry of Deeds. The subdivider shall promptly, after recording, send a copy of the covenant, showing book and page number, to the Board.

3630. Converting Covenant to Another Performance Guarantee. If the applicant desires that lots be released from a covenant and that the improvements remaining to be constructed or installed be secured by another form of performance guarantee, a formal written request shall be sent to the Planning Board by registered mail which sets forth and includes:

- a. The extent and scope of remaining work to be completed to satisfy the requirements for the construction or installation of all required ways and municipal services; and
- b. An estimate, pursuant to these Regulations, which reflects all remaining costs related to the construction of all required ways and installation of all required municipal services; and,
- c. The form and type of guarantee being given to the Planning Board to secure all remaining improvements.

The Planning Board or its agent will make a determination as to the sufficiency of the submitted estimate, and, if such estimate is accepted, a new performance guarantee will be given to the Planning Board. Upon acceptance by the Planning Board of the new performance guarantee, all applicable lots shall be released from the covenant.

3640. Converting Bond, Deposit, or Agreement to Covenant. If the applicant desires to secure by means of a covenant the construction of ways and the installation of municipal services in a portion of a subdivision for which no building permits have been granted nor any lots have been sold, and to have the Planning Board release the bond, deposit of money or negotiable security, or agreement and mortgage previously furnished to secure such construction and installation, the applicant shall submit to the Planning Board a reproducible tracing and three (3) contact prints of the reproducible tracing of the definitive subdivision plan, limited to that part of the plan which is to be subject to such covenant. Upon approval of the covenant by the Planning Board, reference thereto shall be inscribed on such section of the plan, and it shall be endorsed by the Planning Board and recorded with the covenant at the expense of the applicant. Certified copies of all documents which the applicant records at the Registry of Deeds shall be provided to the Planning Board as set forth in these Regulations.

3650. Using Performance Guarantee in Case of Default. If the applicant fails to complete the construction and installation work to the satisfaction of the Planning Board and in compliance with all applicable agreements, plans, regulations, and specifications, the Planning Board shall be entitled to enforce any bond or to use any deposit or other securities for the benefit of the Town to the extent necessary to complete all such required work without delay. The performance guarantees shall be used to cover all costs to the Town of completing such construction and installation. The Town, at its option, may enter upon the premises of the subdivision and itself,

or through others, supply whatever materials and perform whatever work it deems necessary to remedy such failure and complete all work called for to be performed by the applicant. If the performance guarantee posted by the applicant is not sufficient to complete the required subdivision improvements or to remedy any failure of installed improvements, the Town, at its option, may initiate proceedings to recover the additional costs necessary from the applicant to correct and complete all required work. The proceedings shall include an amendment to the approved subdivision plan in accordance with these Regulations to increase the amount of the performance guarantee. If the applicant does not provide the additional security, the Planning Board may initiate appropriate legal action to ensure compliance.

3700. ENDORSEMENT AND RECORDING.

3710. Certificate of Approval. The action of the Board with respect to any Definitive Plan shall be by vote, copies of which shall be certified and filed with the Town Clerk and sent by registered mail to the applicant. If the Board modifies or disapproves such plan, it shall state in its vote the reason for such modification or disapproval. Final approval, if granted, shall be endorsed on the original drawing of the Definitive Plan by the signatures of a majority of the Board, but not until the statutory twenty (20) day appeal period has elapsed following the filing of the certificate of the Board's action with the Town Clerk and said clerk has notified the Board that no appeal has been filed.

3711. After the Definitive Plan has been approved and endorsed, the applicant shall furnish the Board with eight (8) blueprints and the original thereof. The Planning Board upon receipt of the blueprints and the original, shall send one (1) blueprint to each of the following Boards or Supervisors of the Town of Marion: Fire Department, Conservation Commission, Board of Health, Board of Assessors, Municipal Light Board, and Department of Public Works, and shall retain the original and two copies for its own files.

3712. Final approval of the Definitive Plan does not constitute the laying out or acceptance by the Town of streets within a subdivision.

3720. Recording of Plan. Within thirty (30) days after the return of an approved plan, the applicant shall cause to be recorded in the Plymouth County Registry of Deeds, and in the case of registered land with the recorder of the Land Court, a copy of the approved Definitive Plan and accompanying covenants and agreements, if any. Following plan approval, endorsement, and recording, the applicant shall provide the Board with five (5) prints of the Definitive Plan, one of which shall be certified by the Registry of Deeds as having been recorded, and one (1) copy of final covenants and restrictions, noting book, page number, and date of recording for each. One copy of the Definitive Plan shall be forwarded to the Building Inspector by the Board.

3800. EVIDENCE OF SATISFACTORY PERFORMANCE.

3810. Submission. Before the Board shall finally release a performance bond or a deposit, or in the case of approval with covenants, issue a final release of a covenant, all held pursuant to Section 3500, above, the applicant shall:

3811. File with the Board a certified copy of the layout plan of each street in the subdivision marked "As Built". In the case of approval with covenants, the applicant may show only the street or streets serving the lots for which a release is desired on the layout plan. Certification shall be by a Registered Professional Engineer or Land Surveyor, and shall indicate that streets, storm drains, sewers, water mains, and their appurtenances have been constructed in accordance with said plan and are accurately located as shown thereon.

3812. Obtain and submit to the Board written evidence that the required improvements, as set forth herein, have been completed to the satisfaction of the official listed below:

- a. for the planting of any required street trees: Tree Warden;
- b. for the placing of monuments and construction of all other required improvements and the performance of all other required work: Planning Board and/or its designated agent;
- c. for streets, drainage and Storm Water Management, in conformance with the approved Definitive Plan: Planning board and/or its designated agent;
- d. for underground wiring, water mains, sanitary sewers, storm sewers, hydrants, fire ponds, and fire alarms, as in conformance with the approved Definitive Plan: Planning Board and/or its designated agent.

3813. The applicant shall submit written evidence that all of the required improvements stated in Section 3812 have been in place twelve months without damage, or, if damage has occurred, that such damaged improvements have been repaired to the satisfaction of the Board.

3900. RELEASE OF PERFORMANCE GUARANTEE.

3910. General. Upon completion of the improvements required under Section 3812, or the performance of any covenant with respect to any lot, the applicant shall send by registered mail to the Town Clerk a statement, in duplicate, that said construction or installation in connection with any bond, deposit, or covenant has been completed in accordance with the requirements of Section 4000. Such statement shall contain the name and address of the applicant, and the date of filing with the Town Clerk. The Town Clerk shall forthwith furnish a copy of the statement to the Board. If the Board determines that said construction or installation has been completed, in accordance with Section 3700 and Section 3800, above, it shall release the interest of the Town in such bond or deposit and return the bond or deposit to the person who furnished same, or issue a release of covenant in a form acceptable for recording. If the Board determines that said construction or installation has not been completed, it shall specify to the applicant in writing the details wherein said construction or installation fails to comply with the provisions of Section 4000. Upon failure of the Board to so notify the applicant within forty-five (45) days after the receipt by the clerk of said statement, all obligations under the bond shall cease and terminate by operation of law, and deposit shall be returned, and any covenant shall become void. In the event that such forty-five (45) day period expires without notification by the Board, or without the release and return of the bond, or the return of the deposit, or the release of

the covenant, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which shall be recorded by the applicant.

3920. Ways and Services. The Board shall release from covenants only those lots for which installation and construction of ways and services, including drainage facilities, have been completed, in accordance with these Rules and Regulations. The applicant shall submit the appropriate form when applying for the release of a lot from a covenant.

3930. Pavement. The Board shall not release any bond, deposit, or covenant nor shall a building permit be granted for any lot until the first course of pavement has been installed with manhole covers and other structures set therein at the level of such first course.

3900A. RESIDENTIAL COMPOUND

3910A. Purpose

The purpose of this Section III.G. is to provide qualified subdividers an option to develop a parcel of land under less stringent requirements, where, and only where, the Board determines that such alternative procedures will promote development of the parcel in the best interest of the Town, considering the factors specified in sec. 3 below. The submittal of a Residential Compound Plan (RCP) shall be treated as the submittal of a Definitive Plan for the purposes of the Subdivision Control Law. The developer may, at his option, first submit a Preliminary Plan. The approval of a Residential Compound shall not be construed as denial of the right to subdivide the property, and the applicant shall retain all rights to submit a plan under Section II.B and III.B, herein. Applicants are advised to see Sec. 5.1, note 11, of the Zoning By-law for provisions regarding reduced lot frontage within a Residential Compound.

3920A. Eligibility

Applicants for subdivision of land contained entirely within the Residence A, B, C or D Districts may request that their proposal be handled as a Residential Compound Plan. The requirements for development of a Residential compound are less stringent than for a subdivision under Section 3300, herein. Prior to investing in extensive professional design costs for preparation of a RCP, the applicant is invited to review the proposed development of the parcel of land with the Board, in order to explore general conditions involving the site and to discuss potential problems. Pencil sketches, which need not be professionally prepared, will assist in this discussion, and should show the critical features described in Section 3940A below.

To qualify for consideration as a RCP, the subdivision must satisfy all of the following conditions; provided, however, that satisfaction of the following conditions shall only result in rendering the plan eligible for further consideration by the Board pursuant to Section 3930A, below, and does not guarantee approval.

- a. The RCP must create at least two (2) but not more than six (6) lots and have a minimum of one hundred (100) feet of frontage on an existing public way in Marion.

- b. All lots so created shall be accessed by a Common Private Way created herewith.
- c. Each lot shall have at least fifty (50) feet of frontage on the Common Private Way and shall contain one hundred fifty percent (150%) of the minimum area requirement for the district in which it is located; provided, however, that the contiguous uplands area required to compute such minimum lot area shall be based upon the minimum lot area requirement for the district in which the lot is located, and not upon the area of the actual lot.
- d. The Common Private Way shall extend from a Town of Marion approved or accepted public way, and shall end in a cul-de-sac, as described below.
- e. Not more than one (1) RCP subdivision shall be created from a property, or a set of contiguous properties held in common ownership as of date of enactment. Documentation to this effect shall be submitted to the Planning Board along with the application for RCP approval. No further division of the subject property shall be permitted after the creation of the RCP.
- f. A buffer zone of at least two hundred (200) feet in width of indigenous vegetation shall separate the structures in the development from any adjacent public way. No vegetation shall be removed from this buffer zone after the development of the residential compound, nor shall any building or structure be placed therein.

3930A. Criteria for Planning Board Approval

The Planning Board may approve a RCP subdivision upon a determination that the RCP, as compared to an orthodox subdivision of the same parcel, is likely to:

- a. reduce the number of lots having egress onto existing public ways;
- b. reduce the number of lots having frontage on existing public ways;
- c. reduce cut and fill in road construction and subdivision development and reduce removal of indigenous vegetation;
- d. promote public safety and welfare, particularly with regard to traffic and pedestrian safety;
- e. be constructed in a manner which will minimize the visual impact of the development of the subject parcel of land as viewed from the public way providing access to the RCP subdivision, or from adjacent residentially zoned properties;
- f. produce less irregularly shaped or contorted lot configurations; or
- g. promote housing affordable to persons or families of low or moderate income, as defined by the standards and criteria of the Massachusetts Dept. of Housing & Community Development.

3940A. Application

The Planning Board may request the submission of all of the information required for the submittal of a Definitive Plan. The Planning Board, however, may waive such requirements, after considering the factors specified in Section 2 and 3 above. In that event, any plan

acceptable to the Registry of Deeds may be submitted, provided that on that plan or on separate documents, the following information has been provided:

- a. centerline profile of proposed Common Private Way;
- b. location of any wetlands;
- c. proposed drainage;
- d. proposed utilities and road construction design;
- e. proposed lot lines and building sites;
- f. scale and area of vegetative screening separating the Common Private Way and CP lots from adjacent public way;
- g. names of abutters from the latest available Assessor's records.

Such plan shall be prepared by a Registered Professional Engineer, Land Surveyor, Architect or Landscape Architect, unless this requirement is waived by the Planning Board.

3950A. Filing Fee

A filing fee of \$ 1,000.00 shall be submitted with the application form to cover costs of processing and initial engineering review. In the event that the Board determines that unusual or exceptional circumstances necessitate expert technical review that exceeds the cost of the filing fee, the cost of obtaining such expert technical review shall be paid by the subdivider.

3960A. Conditions

Any plan approved as an RCP must contain or refer to recorded covenants regarding each of the following:

- a. the Common Private Way shall remain permanently a private way, which shall not be extended.
- b. the Common Private Way shall not be connected to any other way except where it originates on a public way.
- c. the lots shall obtain access from the Common Private Way if, and only if, ownership of the lot provides membership in an automatic membership homeowners association, in a form acceptable to the Planning Board, which association shall be responsible for all maintenance and snow removal of or from the Common Private Way. The homeowners association shall retain all rights in the Common Private Way.
- d. the Common Private Way does not meet the standard of the Town for acceptance for new ways and shall not be proposed for such acceptance.
- e. owners of lots in the RCP shall be subject to betterments for Common Private Way payable to the Town.
- f. the homeowners association shall indemnify, hold harmless and release the Town from liability for any damages resulting from any action brought by a third party or the association in any court due to the repair, use or maintenance of the Common Private Way.

3970A. Common Private Ways

Common Private Ways shall have:

- a. A staging area to promote ease of access from the Common Private Way to the abutting public way, and to provide for the proper discharge of water from the common private way onto the abutting public way. The staging area shall be at least forty (40) feet in length from the pavement on the public way, with a minimum width of eighteen (18) feet of pavement in accordance with the Subdivision Regulations, and sloped not more than four percent (4%) grade for the forty (40) feet it extends from the pavement on the public way.
- b. A centerline intersection with the street centerline of not less than sixty percent (60%).
- c. A roadway surface, on that portion of the Common Private Way extending beyond the staging area, of a minimum of six (6) inches of graded gravel, placed over a properly prepared base, graded and compacted to drain from the crown; provided, however, that the applicant may seek a waiver of this provision upon a demonstration that alternative construction standards meet the access and safety standards of this provision. Any subsequent change to the roadway surface after the construction of the RCP shall require a modification of the endorsed plan pursuant to M.G.L. c. 41, s. 81W.
- d. Proper drainage appurtenances, where required, to prevent washout and excessive erosion, with particular attention to the staging area to provide for the proper discharge of water from the common private way onto the abutting public way.
- e. A roadway surface, on that portion of the Common Private Way extending beyond the staging area, with a minimum width of sixteen (16) feet for its entire length, and a minimum right-of-way width of twenty-five (25) feet for its entire length.
- f. A turnaround or cul-de-sac of not less than thirty (30) feet in depth and forty (40) feet in width provided at the terminus.
- g. A buffer zone of not less than thirty (30) feet in width of indigenous vegetation separating the Common Private Way from any pre-existing residential lot line.

3980A. Processing and Decision

The Planning Board shall review a RCP in accordance with the procedures set forth in Section 3300. The Planning Board shall render a decision regarding a RCP in accordance with the provision of M. G. L. c. 41, s. 81U and Section 3300 herein. To the extent that the RCP is designed with lesser requirements for road width, right of way width, and the like, such lesser requirements shall be considered as waivers from the otherwise applicable requirements of Section 3300 for Definitive Plans.